

City of Santa Barbara

# NEW ZONING ORDINANCE

Issues and Options

January 2015

Prepared by

**DYETT & BHATIA**

Urban and Regional Planners



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# Introduction

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The Santa Barbara New Zoning Ordinance (NZO) effort was initiated to update Santa Barbara's regulation of land use and development included in the Zoning Ordinance, bringing it up to date to reflect current uses and practices and providing consistency with the policy direction of the General Plan.

As the first step of this effort, Santa Barbara's consultant team, Dyett & Bhatia, is evaluating the City's current approach to regulating development and determining if there are alternative approaches that would better implement the new General Plan, attract high quality development meeting community needs, and respond to State and federal mandates.

Dyett & Bhatia began working on the update in October 2014. Their work has included field reconnaissance of current development in Santa Barbara; meetings with City staff and the NZO Joint Committee; review of City staff/stakeholder meeting notes; an assessment of existing regulatory tools; preparation of a public outreach program; and preliminary recommendations for a new zoning framework.

This working paper summarizes the principal findings and conclusions of the reconnaissance work and recommends a number of ways that the current Ordinance could be improved to meet the overall objectives of the NZO. The next phase of the project will include preparation of an Annotated Outline to guide actual drafting of the new regulations, which will be prepared in "modules," and reviewed by the NZO Joint Committee and the community.

To carry forward the concepts embodied in this paper, everyone's views and opinions must be heard and considered. Input from Santa Barbara's residents and business owners will be a vital aspect of the process. Specifically, the City will want to hear about what residents want and expect development regulations to do to maintain the character and charm of Santa Barbara's neighborhoods and improve the quality of life throughout the City. Preservation and protection of what makes Santa Barbara special is of utmost importance, but updated regulations should not be barriers to development that implements the General Plan. The regulations must be predictable, understandable, and enforceable. They must be written to make their intent and purpose clear to everyone—property owners, developers, and residents in general. The ideas this paper presents are set forth to achieve these objectives.

Because the purpose of this paper was to identify ways to improve Santa Barbara's Zoning Ordinance, the recommendations focus on suggested changes with only passing reference to all the positive attributes of the Ordinance. The reader should keep this intent in mind to avoid misconstruing the consultant team's conclusions and recommendations and thinking that the Ordinance is inherently flawed—which it is not.

## OBJECTIVES

This Issues and Options Paper includes diagnosis and technical recommendations for the Santa Barbara NZO. The recently adopted 2030 General Plan focuses on future growth and

realizing the community's vision for the future—a holistically sustainable community that blends and balances protecting and enhancing its natural and built environments, social equity, and economic vitality that form the character of the community. The General Plan provides very clear direction on appropriate uses, development density and intensity, and land use zone classification concepts. This paper includes specific recommendations for the NZO to ensure that the updated zoning provisions implement the 2030 General Plan, respond to community needs, and build on the City's existing processes and regulations.

Overall, the substantive framework for Santa Barbara's zoning regulations, development standards, and review procedures are sound, but with amendments over time, they have become somewhat unwieldy and difficult to implement. A major shift in approach is not necessary to achieve the policy objectives of encouraging desirable development. However, it could be advantageous for Santa Barbara to restructure and revise the Ordinance so that it combines approaches in a somewhat different way than the current Ordinance does to provide a more effective tool to implement the General Plan. Instituting the reforms that the recommendations in this paper embody could help to better accomplish Santa Barbara's goals and lead to greater ease of use and clearer standards.

Through this process, the objective is to craft a new Zoning Ordinance that:

- Is consistent with and implements the General Plan;
- Is modern and reflects the City's current uses, practices, and development patterns;
- Provides clear decision-making protocols and streamlined review processes, where appropriate;
- Addresses previously created nonconforming situations and brings them into compliance to the extent feasible;
- Promotes adaptive reuse of properties; and
- Is clear, concise, understandable, and easy to use.

## **ISSUES ADDRESSED IN THIS PAPER**

Based on stakeholder meetings, information provided by City staff, and the objectives noted in the introduction, the following themes provide a framework for the Issues and Options Paper—running through all of them is the idea of ensuring consistency with the 2030 General Plan:

- Making Santa Barbara's regulatory tools easier to use and understand;
- Providing for the needs of individual neighborhoods;
- Reserving places for industry and commerce to support economic development;
- Ensuring sustainable development and adaptive reuse;
- Reducing the number of nonconforming situations to the extent practicable; and

- Streamlining the City’s development review and approval processes while also providing opportunities for public input.

Each of these issues is addressed in subsequent sections of this paper. Specific topical and technical issues, such as religious uses and housing for persons with disabilities also are discussed at the end of this paper.

## **SUMMARY OF RECOMMENDATIONS**

The recommendations proposed for consideration are grouped into the three topical areas summarized below. It should be noted that these recommendations do not all carry the same weight; some are more important and will have more far-reaching effects than others. These differences are discussed in the body of the paper.

### **Recommendation No. 1: Make Zoning Easier to Understand and Use**

- 1-A Develop a New Format and Organization
- 1-B Consolidate Standards
- 1-C Consolidate Zones and Provide Purpose Statements
- 1-D Employ “Use” Groups
- 1-E Simplify, Refine, or Eliminate Unnecessary Regulations and Procedures
- 1-F Use Graphics to Reduce Wordiness
- 1-G Tabulate and Cross-Reference Regulations
- 1-H Update Definitions and Incorporate Standard Rules of Measurement

### **Recommendation No. 2: Streamline Development Review and Approval**

- 2-A Provide Additional Administrative Relief Options
- 2-B Clarify Review and Approval Procedures
- 2-C Increase Director and/or Staff Hearing Officer Authority for Approval
- 2-D Streamline Zoning Review

### **Recommendation No. 3: Support Adaptive Reuse and Protect Character of Distinct Areas**

- 3-A Modify Setback Standards to Reflect Neighborhood Character
- 3-B Narrow Residential and Commercial Uses In Industrial Areas
- 3-C Update Residential Parking Requirements
- 3-D Allow More Flexibility for Nonresidential Parking Requirements
- 3-E Establish a Classification System for Nonconforming Uses

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## Approaches to Zoning

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American cities use zoning to accomplish a number of purposes. Some of these purposes are well established, such as the maintenance of stable residential areas and the prevention of health and safety hazards. Others—such as promoting transit-oriented development, maintaining aesthetic values, encouraging infill development, and creating walkable communities—are newer. All of the purposes and powers of zoning are rooted in the police powers that the State grants to local governments.

Zoning, subdivision controls, and other regulations also are intended to implement City plans, visions, and goals. A zoning ordinance, such as Title 28 of the Santa Barbara Municipal Code, translates the policies of a comprehensive land use plan into parcel-specific regulations. As such, zoning should be used to implement land use, urban design, and open space plans, rather than to serve as the primary planning tool to resolve local traffic circulation issues, protect sensitive habitat, or create traditional neighborhoods.

Zoning regulations have traditionally been used to separate incompatible land uses, minimize nuisance impacts and environmental harm, and coordinate or time development intensity with supporting public infrastructure. Zoning is also effective for dealing with the geographic location of activities and for regulating the three-dimensional aspects of development with height, bulk, setback, and architectural design standards. Zoning is a way to make explicit a City's policies for development and urban design, to ensure fairness (so all lots in a given zone may be developed to similar intensities and are subject to similar restrictions and public contributions), and to avoid abuses of discretion.

In recent decades, zoning has been called on to address an increasingly diverse variety of public policy goals related to environmental protection, economic development, neighborhood revitalization, aesthetics, public safety, and transportation mode choice. Cities and counties have also used zoning to address market issues (e.g., controls on “big box” or large-format retail stores and franchise food operations). Zoning is less effective in realizing these types of public policy goals than it is in addressing physical form and uses of land. Another limitation of zoning is that it can work only on an incremental basis, as individual parcels develop or redevelop.

In sum, a zoning ordinance deals with two basic concerns:

- How to minimize the adverse effects that buildings or uses on a property can have on its neighbors; and
- How to encourage optimal development patterns and activities within a community, as expressed in planning policies.

## TYPES OF ZONING

Three main types of zoning ordinances are in use in the U.S. today—Euclidean, performance-based, and physical form codes. The pros and cons of these basic types of zoning are summarized in the table on the following page.

**Table 1: Comparisons of Types of Zoning Ordinances**

Type of Zoning Ordinance	Pros and Cons
<p><b>Euclidean:</b> Most American zoning codes follow some variation of the Euclidean model, named after Euclid, Ohio’s zoning code. Euclidean zoning schemes divide jurisdictions into districts or zones, wherein certain types and intensities of uses are allowed. Historically, these have been relatively homogeneous, with separate zones for residential, commercial, and industrial uses, and have worked to segregate dissimilar uses. More recently, Euclidean codes also have been used to create mixed-use zoning districts. Euclidean zoning codes typically specify allowed uses, maximum residential density, and bulk and dimensional standards.</p>	<p>Euclidean codes tend to be largely prescriptive and therefore work best at preventing the most basic problems or nuisances. They are less effective in dealing with fine-grain neighborhood character issues that often arise in places where infill and redevelopment are most common.</p> <p>Within newly developing areas, Euclidean codes need to be linked to land division or subdivision regulations to provide the statutory basis and standards for decisions on street networks, pedestrian connections, and the location of parks, open spaces, and civic facilities.</p>
<p><b>Performance-based:</b> Performance-based codes include objective, quantifiable standards that are applied to uses to reduce impacts, promote land use compatibility, and improve the quality of development. The regulations and review procedures in these codes generally focus on how uses operate. Basic performance standards may include standards that directly limit impacts (e.g., noise standards) as well as standards that control impacts indirectly by constraining intensity of operations (e.g., floor area, residential density).</p>	<p>Performance-based codes are somewhat less prescriptive than form-based codes, at least in terms of design details, and allow for more architectural creativity and context-based solutions. They may be more complicated to administer than other codes, but can provide more certainty as to use and density/intensity and so may be favored by the development community and neighborhood organizations over codes that prescribe architectural design or rely on discretionary procedures involving public hearings and conditions of approval to ensure land use compatibility.</p>
<p><b>Physical form-based:</b> Form-based codes prescribe the design or type of building, street, or neighborhood subarea, with limited or no restrictions on use. They typically include generic design prototypes for housing and commercial buildings and their relation to the street and to each other. This approach may differentiate neighborhoods, districts, and corridors; provide for a mixture of land uses and housing types within each; and provide specific measures for regulating relationships between buildings and between buildings and outdoor public areas, including streets.</p>	<p>Form-based codes tend to be highly prescriptive and are therefore thought of as very predictable. They are a way to express what is desired rather than what is discouraged or prohibited. These codes address matters outside those traditionally thought of as zoning (e.g., street design, sidewalks, parks, and civic spaces), and so are often portrayed as more “holistic” than conventional zoning. They provide a way to bring planning and design considerations into zoning. These codes are effective where strong design guidance is needed and limitations on use and intensity are not critical.</p>



Other types of zoning include:

- Incentive zoning, which essentially involves trade-offs between the City and the developer; the City relaxes certain zoning requirements in exchange for the developer providing an amenity, such as public open spaces, or a public benefit, such as better transit station access or affordable housing.
- Hybrid zoning approaches integrate physical design (form-based) standards and performance regulations into otherwise conventional zoning ordinances, while often downplaying use-based regulatory strategies.

## **WHAT TYPE OF ZONING DOES SANTA BARBARA HAVE?**

Santa Barbara's Zoning Ordinance primarily follows a Euclidean scheme, with a few noteworthy exceptions such as the recently adopted Average Unit Density Program, the Growth Management Program, and the Modification process, which are performance based programs. The majority of zones within Santa Barbara's zoning classification system separate types of uses (residential, commercial, etc.). While the City does have design guidelines and a design review process separate from the Zoning Ordinance, there is little guidance on urban form or performance-based expectations in the Zoning Ordinance itself. The City does have processes for providing for exceptions to zoning standards through variances and modifications.

As part of the NZO, the City may want to consider continuing with the approach of a primarily Euclidian zoning ordinance complimented by design guidelines and design review. While the overall approach to zoning remains the same, updated regulations may include performance-based standards (e.g., noise and lighting standards) where needed to directly limit impacts or dimensional standards (e.g., setbacks) that vary based on context as it attempts to preserve unique characteristics of distinct neighborhoods and support adaptive reuse.

## **THE BASIC DILEMMA: FLEXIBILITY VS. CERTAINTY**

As Santa Barbara considers how best to improve it's zoning regulations, one issue will be how to find the right balance between flexibility and certainty that will best implement the General Plan. The dichotomy between these concepts creates tension, not only for City officials and staff who use the Ordinance on a day-to-day basis, but also for homeowners, business owners, and others who may only come into contact with zoning a few times over the years that they live or work in the City. Everyone wants the rules and standards by which new development will be judged to be simple to understand, including how decisions are made to approve, conditionally approve, or reject applications. Flexibility is also important; the site or existing building may be unique, the design innovative and responsive, or the public benefits so compelling that some relief from underlying requirements may be appropriate. For many, knowing the timeframe as well as the criteria for approval is also important (e.g., who has appeal rights, and when is a decision final so a project can proceed). Perspectives from those who use the Ordinance help inform the discussion about this issue.

## **Users' Perspectives**

Expectations about what zoning should or should not do and how far it should go differ depending on individual perspectives and goals. Owners may view zoning differently than design professionals, and City staff perspectives are not always the same as those of residents or City officials. At the risk of over-simplification, we offer the following set of expectations for different code users as a starting point for thinking about regulatory options.

### **Owners**

Property owners applying to the City for a zoning approval generally want to know:

- **What are the rules that the City follows for development review?** These include use regulations, development standards, review procedures, and criteria for decision-making.
- **What is the timeframe for decision-making, and when is a decision considered final?** Is it the day the approval is granted, or is there some stated time they have to wait before they know they can proceed with the next steps, refine an architectural design, solicit bids, and initiate construction? Users also need to know how much time they have to obtain a building permit or business license.
- **What relief can they request if a regulation or standard constrains what they would like to do with their property or building?** In thinking about relief, it often is useful to distinguish concerns about what the allowable uses are (recognizing that use variances are illegal and the only way to accommodate different uses would be through a zoning ordinance or map amendment, a Modification, Conditional Use Permit, or Performance Standard Permit) from concerns about how to accommodate a design or improvement on a lot. Relief may be needed from physical development standards (e.g., setbacks or fence height limitations) or from performance requirements that relate primarily to the impact of a use or building design on an adjacent lot.
- **How important are neighbor concerns in the decision-making process?** If an owner follows the rules, does the City have the right to require changes to a design solely because of a neighbor's objections? Are there limitations on conditions of approval or are all elements of a project "negotiable"? Does the City distinguish "by-right" development applications from those requesting exceptions to the standards in weighing how far to go to respond to community concerns?

### **Design Professionals**

Architects and other design professionals typically want to know the answer to the same questions owners pose, but because of their specific role in a project, they often want to know more specifically how much flexibility the ordinance allows for site planning and design.

Examples of flexibility that is typically sought includes:

- Relief from overly prescriptive standards, including setbacks, building height, bulk and articulation, landscaping, location of parking, and design standards;
- Relief for buildings with historic or architectural character; and
- Relief for uses or activities with unique needs.

### **Planning Staff and Officers**

City planners and Planning Division members also want flexibility for a number of reasons:

- To respond to community concerns;
- To implement the General Plan and to further public policies;
- To reconcile competing priorities, as is frequently the case with a General Plan; and
- To protect unique and special resources, which may range from environmental resources to historic buildings, affordable housing, and special retail uses.

### **Santa Barbara Neighbors and Business Owners**

While planners and City officials strive to respond to community concerns, applicants and neighbors do not always have the same perspective on zoning, particularly if they feel their self-interest is not being served. Many critical issues were decided when the General Plan was prepared; however, as implementation details are worked out, the community's feelings about General Plan direction may evolve, and there may not be consensus on all of the regulatory solutions proposed to implement the plan.

Neighbors want to know with some certainty what can be built, so there are no surprises once construction begins. However, if they have concerns, they would like to know what the process is for community input—how much flexibility the City has to condition approval and what they can do to affect the final result. Likewise, owners want to know whether they can expand or adapt space to new uses or activities. Being able to respond quickly to changing markets is important, and lengthy review times can prove to be overly burdensome to that objective.

### **Tradeoffs**

As the City considers the next steps for regulatory reform, discussion of choices could address these basic philosophical issues:

- **Flexibility vs. predictability:** How flexible are the zoning standards? Should the area for negotiation be wide or narrow? To what extent should this be determined by the Ordinance or by practice?
- **Flexibility vs. administrative cost:** What are the costs to the applicant, to opponents, and to the city's tolerance for hearings? Some communities expect hearings for all zoning related decisions while others reserve hearings only for the most con-

troversial projects. Many communities' tolerance for hearings lie somewhere in between.

- **Effort vs. quality:** Standards should be written with an understanding of what it takes to implement them, and on the resultant quality of the environment for both the user and the community at large. Is there a reasonable relation of 'cost' to 'benefit'?
- **Preservation vs. development:** Will a particular regulation stimulate or dampen change in uses, users, or appearance? A related issue is whether adopting a new standard will result in a proliferation of nonconforming situations, which could also discourage investment to avoid losing the nonconforming status or triggering a threshold, which may require bringing the entire property into conformity with current rules and regulations.
- **Under-regulation vs. over-regulation:** How does the community find the least number of rules that will do the job?

Striking the right balance will not be easy, and lessons from similar communities that have recently amended their zoning and ordinances can enable the City to avoid mistakes others have made.

## **Recommendation No. 1: Make Zoning Easier to Understand and Use**

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The need to make Santa Barbara's Zoning Ordinance more user-friendly and concise was one common observation noted during meetings with stakeholders and was an issue expressed by City staff. Many Ordinance users commented that the text of the Ordinance is too complex and hard to interpret; others said that the document is difficult to navigate and should rely more extensively on pointers and references to direct users to appropriate regulations. This section contains general observations about the existing organization, format, and usability, as well as strategies for improving these aspects of the existing Ordinance.

### **ORGANIZATION AND STYLE**

The City of Santa Barbara's Zoning Ordinance is composed of 60 standalone chapters that are organized in a manner that exhibits an underlying structure, but appears to have been amended over time, with chapters having been added without much consideration to the overall structure and organization. The Ordinance does not currently group uses or other requirements into separate parts or articles to assist users in finding the information for which they searching. The Ordinance begins with chapters providing definitions and general provisions, followed by administrative provisions for the Staff Hearing Officer, Planning Commission, General Plan Amendment, and Specific Plans. Separate zones are then described, with the majority of zones having their own chapter. Similar zones are generally located near each other; however, the sheer number of zones with separate chapters for each makes it difficult for users to identify distinctions between similar zones. The zone chapters are followed by other chapters that are arranged in a haphazard manner and do not follow a logical sequence. These include chapters related to standards for specific uses (e.g., medical cannabis dispensaries, adult entertainment facilities), general provisions, condominium provisions, parking and loading, and transfer of development rights, as well as additional administrative provisions, including Zoning Amendments, Variances, Performance Standard Permits, and Conditional Use Permits.

The Zoning Ordinance also includes several instances of unnecessary redundancy. Because the requirements for each zone are, for the most part, included within separate chapters, information that could be grouped together is repeated in several chapters, resulting in avoidable repetition. Zone regulations often include citywide standards, and citywide standards repeat regulation topics, even if there are no distinct citywide standards. For example, Property Development Standards are identified in the regulations for each zone as well as citywide. All topic areas are included (e.g., lot area, lot dimensions, population density) regardless of whether a requirement applies or if the regulations are set forth in other sections.

Over the years, sections and chapters have been updated or added without a comprehensive reformat of the Ordinance, and content is not organized according to the way that people typically use it. As a result of this, ordinance users must search through a large amount of text before arriving at the sections they need. Stakeholders expressed the difficulty of simply

finding desired materials. The overall organization and formatting of the Ordinance should reflect a systematic, consistent, and sound arrangement to facilitate understanding.

## **INCONSISTENT ZONING APPROACH**

Santa Barbara's existing base zones can be generally grouped into four categories—residential, commercial, industrial, and park and recreation. The current ordinance identifies a total of 22 base zones including nine residential, nine commercial, three industrial, and one park and recreation zone, as well as nine different overlay/dual zone classifications. Some designations are referred to as overlay zones, while others are referred to as dual zoning classifications, though both are identified as overlay zones on the current Zoning Map. For example, the R-H Resort-Residential Hotel Zone is described as a dual zoning classification in the text of the Zoning Ordinance, but is listed as an overlay zone on the Zoning Map. Thus, it is unclear from the text and structure of the zoning ordinance whether distinctions are intended to exist between the two.

In addition, Specific Plan areas are also listed as overlay zones on the Zoning Map, though it would be more appropriate for them to be listed separately, as they are the underlying zone for that designated area. Consistency in the text of the Zoning Ordinance and in the Zoning Map is needed to alleviate confusion regarding how requirements should be applied.

## **LACK OF PURPOSE STATEMENTS**

In many cases, distinctions between zones are not clear because the zones lack purpose statements that would explain the intent of the regulations. There are, for example, six single-family residential zones and four separate zones related to hotel-type uses. Whether these are just intended for differences in lot development standards or there should also be other distinctions is not evident. Purpose statements explain the intent of their regulations and how they relate to General Plan land use designations. Without this clarification, planning staff and decision-makers can only enforce the letter of the law while speculating about how the regulations implement the General Plan goals and policies. This lack of clarity can lead to inconsistent decisions and frustration for property owners and citizens alike.

## **UNCLEAR LISTS OF ALLOWED USES**

Each base zone currently contains a list of allowed uses by right or by review and approval of a Conditional Use Permit or Performance Standard Permit. Many of the listed uses are not defined. Frequently, the same use appears in different chapters under similar, but different guises. For example, arts-related uses (e.g., photography or artist studios), including storage of product or raw materials incidental to the use are permitted in the SP-7 and OC zones, while photographic shops are allowed in the C-P Zone, photographic studios are allowed in the C-L Zone, and photographers and photographic stores are separately permitted in the C-1 Zone. Similarly, drug manufacturing and medicine manufacturing are listed as separate permitted uses in the M-1 Zone without establishing differences between the two. In addition, some conditional uses or uses requiring a Performance Standard Permit are listed within the base chapter, although others are listed in the separate Performance Standards Permits and Conditional Use Permits chapters.

Many jurisdictions have adopted a flexible system for use regulation to accommodate new development and minimize the need for Zoning Ordinance amendments to accommodate new and changing uses. Typically, this strategy includes the formulation of “use groups” that classify all land uses and activities according to common characteristics. For example, the Zoning Ordinance currently lists many types of sales separately, including bookstores, stationery stores, jewelry stores, shoe stores, clothing stores, among others. A use group system would consolidate all of these types of sales into one category—retail sales—because they share common physical requirements and play a similar role within neighborhoods. This strategy is discussed further in the recommendations discussion, below.

## **ORDINANCE COMPLEXITY**

The Ordinance contains several instances of direct duplication. For example, a lengthy set of nearly identical regulations for setbacks is included in the majority of the separate commercial zone chapters. Likewise, for setbacks in the R-O and C-O zones, the language is almost exactly the same, except that one provision in the R-O zone differentiates between covered parking, where the C-O zone just says “parking.” It is unclear whether the term “covered” was inadvertently left out intentionally or if it was omitted by accident. Similarly, several provisions within the commercial zone chapters refer back to lot areas and frontage standards to either the R-3 or R-4 zones, depending on the chapter. However, the standards for lot areas and frontage requirements are the same for R-3 and R-4. When the ordinance repeats information in nearly or exactly the same language, it is not always clear whether nuances in wording or positioning are intended to accomplish different goals, or if they override each other entirely. Duplication such as this not only lengthens the text, but also introduces an element of doubt that differently worded regulations might affect a person’s ability to develop and use property. It can also complicate zoning administration.

## **UNDERUTILIZED TABLES AND GRAPHICS**

The existing Zoning Ordinance contains very few tables to help users identify applicable regulations quickly and easily. Tables greatly enhance the ordinance’s usability, and they should be used more extensively to organize the information presented in the ordinance. Places where tables may provide particular assistance include lists of allowed uses across all zones and numerical standards listed in the “Regulations” sections, among others.

In addition, the current Zoning Ordinance provides very few graphic examples or illustrations of standards. Without clarifying visual examples of measurement standards, development standards, and other complex provisions, these sections are highly vulnerable to misinterpretation, which further complicates understanding and enforcement.

## **LACK OF CLEAR DEFINITIONS AND RULES OF MEASUREMENT**

Though the Zoning Ordinance does currently include a section of definitions, they are overly specific and include development standards. Definitions should convey the meaning of a term; standards should be located in the body of the regulations. The definitions should be updated to include modern terminology and be made more general so that they will apply to a terms as they are used throughout the Zoning Ordinance and other City codes and ordi-

nances. The Zoning Ordinance does not include a chapter on rules of measurement, which ensures that all ordinance users are able to determine the way that standards should be applied in the same manner in order to arrive at the same conclusion.

#### **Sampling of Stakeholder Comments:**

- The language needs to be simple, clear, and in plain English. Remove all the double negatives and include more images.
- Tables are important.
- Need to have good cross-references and index to help find things in the code.
- Cross-referencing instead of repeating information significantly reduces the size of the document. Create a document that is usable and user-friendly for staff but also for applicants. Need clear, consistent language.
- The table format and hot links in the County Code are good to use as an example, as well as the typeface, footnotes, and links to sections that also apply.
- As part of the NZO update to definitions, the City should eliminate discrepancies between the zoning code definitions and the uniform building code, which makes it more difficult for projects.

## **RECOMMENDATIONS**

The City should consider the following strategies to make the Zoning Ordinance easier to understand and use.

### **I-A Develop a New Format and Organization**

The organization of Santa Barbara's Zoning Ordinance can be improved in several ways. First, the City should combine, consolidate, and reorganize its 60 existing zoning chapters so that they flow more logically. For example, basic provisions and administrative chapters should be moved to the beginning, followed by chapters related to base and overlay zones, and then chapters related to specific uses and performance standards that apply citywide. As a general rule, the most frequently consulted provisions should come before provisions less frequently consulted. A final chapter can group all definitions and rules of measurement together, so that users have access to a comprehensive reference section in an easily located place. Next, the NZO could be enhanced with a comprehensive table of contents so that users do not have to scour the text for a section when needed. Finally, the City should supplement these organizational revisions with improvements to the appearance of the text itself, including wider spacing, different fonts for articles, sections, and the main text, and consistent indentation.

### **I-B Consolidate Standards**

The City should consolidate its performance and development standards and other requirements that are applicable to specific uses and common to all zones or all zones of one type into one chapter. These could be categorized into site regulations (including requirements



such as parking, landscaping, and screening) and specific use regulations (e.g., requirements for specific uses such as home occupations and telecommunications facilities) and should also include special situations, such as nonconforming and temporary uses that apply in all zones.

Where standards apply solely to a particular set of base zones, for instance, standards for residential open space or commercial landscaping, they should be grouped to immediately follow the standards for that set of zones. Consolidating these rules into one section will help to ensure that standards are logical and consistently interpreted and applied. The City should also consistently include cross-references to these supplemental provisions in the base and overlay zone regulations.

The City should group rules governing the construction of language, interpretation of Zoning Ordinance provisions, and rules of measurement together to serve as a reference section that users can turn to in the event of uncertainty regarding Ordinance provisions. Consolidating these rules into one section will help to ensure that standards are logical and consistently interpreted and applied.

### **I-C Consolidate Zones and Provide Purpose Statements**

Users will also benefit from the combining of similar zones, where appropriate, as the existing Zoning Ordinance consists of numerous zones with very specific allowed uses that often differ slightly between each zone. The City should consider combining some of the six single-family residential zones and nine commercial zones for clarity and to minimize issues that frequently arise from an attempted change of use that faces difficulty due to slight differences between allowed uses or overly specific development standards. For example, the C-P and C-L zones are both Limited Commercial and have many of the same standards. These zones may be able to be combined.

### **I-D Employ “Use” Groups**

The NZO should consolidate use types into a clearly defined modern classification system, which places land uses and activities into groups based on common functional, product, or physical characteristics. There are many advantages to this type of use classification system. Listing use groups instead of specific uses help streamline the use regulation parts of the ordinance. Categories are also broad enough to allow classification of new, unanticipated uses, so that the City does not need to amend these sections or make interpretations as frequently. This system can still allow for standards for problematic uses, such as tattoo parlors, outdoor retail sales, and auto repair.

### **I-E Simplify, Refine, or Eliminate Unnecessary Regulations and Procedures**

Santa Barbara should ensure that the NZO functions efficiently and with the fewest number of provisions necessary to achieve its goals. To this end, unnecessary sections of the ordinance should be removed in order to avoid ambiguity and reduce the sheer bulk of the ordinance. For example, the R-H Resort-Residential Hotel Zone includes regulations for development in areas zones as E-1, E-2, E-3, R-1, R-2, and R-3. However, the R-H Zone is only

located within an R-2 Zone and is not anticipated to be allowed in any other areas within the City in the future. The provisions applicable to E-1, E-2, E-3, R-1, and R-3 zones could be eliminated, as only the R-2 standards are applicable.

### **I-F Use Graphics to Reduce Wordiness**

In many instances, graphics can communicate development regulations more clearly and in less space than written standards. For example, images can clearly depict standards for measuring building height or yard setbacks, while verbal equivalents are prone to misinterpretation and uncertainty. With visual clarification, fewer sections of the Zoning Ordinance will be subject to competing or incorrect interpretations, and regulations can be cleared of much of the jargon that can obscure the ordinance's intent.

### **I-G Tabulate and Cross-Reference Regulations**

The NZO should rely more extensively on tables and cross references to convey development standards, provide quick access to all relevant regulations for a particular topic, and to avoid unnecessary repetition of provisions. Tables and cross-references greatly improve the readability of complex regulations. This method also helps to facilitate searching with hyperlinks in a Web-based version of the ordinance.

### **I-H Update Definitions and Incorporate Standard Rules of Measurement**

Although the existing ordinance currently contains a Definitions chapter, the definitions are outdated and include information that should not be part of a general definition, such as specific standards and/or policies. The definitions provided in the NZO should reflect modern uses and terminology and be consistent with other Titles within the Municipal Code and other applicable City codes or ordinances. A set of rules of measurement should also be incorporated into the NZO to ensure consistent interpretation and application of standards.

## **Recommendation No. 2: Streamline Development Review and Approval**

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Zoning provisions governing development review (i.e. City land use decisions) and other administrative matters create the procedural environment through which the City can achieve the goals and policies set forth in its General Plan and other adopted plans. At their best, development review provisions can promote the type of development a community desires by providing a clear, predictable path to project approval. Conversely, vague review processes with unclear requirements can cause developers a high level of anxiety, frustrate community residents, and severely dampen a City's ability to attract desirable growth.

Generally, prospective developers value three central qualities in any administrative ordinance: certainty in the requirements and structure of the review process, built-in flexibility to adjust development standards to the needs of individual projects, and opportunities to request relief from requirements that constitute a substantial burden. Certainty about the types of development they can expect to see in their community is also important to residents. The degree to which Santa Barbara can incorporate these qualities into the NZO will help improve its ability to compete for development in the near future.

The flexibility of a zoning ordinance is largely defined by its hierarchy of uses and their required permits. This hierarchy establishes the different levels of review the ordinance requires to make various types of zoning decisions. These decisions typically range from a relatively informal counter staff review of proposed uses and structures for compliance prior to the issuance of a building permit to more formal and complex procedures requiring public notice and a hearing before the Staff Hearing Officer or Planning Commission prior to issuance of a Conditional Use Permit or other discretionary land use approval.

The primary factor influencing a project's place in the hierarchy of uses is whether the proposed use is permitted "by right" or allowed subject to certain conditions, such as design review approval, a Performance Standard Permit, or whether a Conditional Use Permit with review by the Planning Commission is required. This determination is a reflection of community issues and concerns and is influenced by how a jurisdiction selects and designs administrative techniques. It is often possible, for example, to reduce the review threshold for a particular type of application (i.e., place it lower in the hierarchy) that is routinely approved or by increasing the specificity of development standards and performance-based criteria to address concerns that warranted a higher level of review.

The NZO should set forth clear administrative procedures to be followed for all types of zoning decisions. The level and extent of administrative process required for different types of decisions will vary. However, for even the simplest administrative procedures, the NZO should, at a minimum, establish unambiguous authority for approval.

## **DECISION-MAKING BODIES**

Santa Barbara's current Zoning Ordinance divides decision-making authority among a number of bodies and officers, as outlined below.

### **Community Development Director**

Santa Barbara's Community Development Director (Director) has authority over the Building and Safety Division; Administration, Housing, and Human Services Division; and the Planning Division in the City. Within the Planning Division, the Director or his/her designee performs higher level review and approvals within the Department, such as determining whether a specific use that is not expressly allowed within a zone is substantially similar to the listed uses within that particular zone or park category, issuing emergency Coastal Development Permits, and approving affordability control covenants. In addition, minor design alterations may be approved as a ministerial action by the Community Development Director or his or her designee without review by the design review boards.

### **Staff Hearing Officer**

The Staff Hearing Officer fulfills a variety of functions, as described in Chapter 28.05 of the Zoning Ordinance, including conducting public hearings, approving, approving with conditions, or denying applications for development as further specified within specific provisions of Title 28 of the Municipal Code. The Director may act as the Staff Hearing Officer or designate another individual as the Staff Hearing Officer. Some of the responsibilities designated to the Staff Hearing Officer include acting on applications for: Performance Standard Permits; Modifications not otherwise requiring Planning Commission; Lot Line Adjustments; limited Development Plans, Condominium Conversions, Tentative Subdivision Maps, and Coastal Development Permits; minor amendments to conditions of approval, adoption of Negative Declarations for Staff Hearing Officer-eligible projects, and approving specified time extensions, among other tasks.

### **Planning Commission**

The Planning Commission is responsible for a large number of approvals, including but not limited to granting Conditional Use Permits, Coastal Development Permits, Tentative Subdivision Maps, Condominium Conversions, Development Plans, Transfer of Existing Development Rights and approving variances and Modifications associated with the project or Modification of the net floor area ratio. The Planning Commission also hears appeals from some decisions made by the Director or Staff Hearing Officer. It also recommends actions to the City Council regarding land use and development, including amendments to the Zoning Map, Zoning Ordinance, and General Plan. When considering the approval of a rezoning or Conditional Use Permit, the Planning Commission may deny, approve, or give a conditional approval based on other conditions or requirements. The Planning Commission also hears items as may be assigned by the City Council.

## City Council

The City Council delegates authority for implementation of the Zoning Ordinance; however, it ultimately is the final decision-making body for all zoning-related issues. It hears all appeals from the actions of the Planning Commission and design boards. It sets fees and processing costs for applications. The City Council hears and decides recommendations from the Planning Commission on Zoning Ordinance and General Plan amendments. Its decision is final for all purposes other than Coastal Development Permit applications that are appealable to the California Coastal Commission.

## LAND USE PERMITS AND APPROVALS

Table 2 summarizes the types of land use permits and approvals that the current ordinance authorizes, and lists the authorities that can issue these approvals.

**Table 2: Land Use Permit Issuing Authorities**

<i>Permit Type</i>	<i>General Purpose</i>	<i>Issuing Authority</i>
Performance Standard Permit	Allows uses that are relatively minor in nature but have unique features that make it impractical to establish their suitability in a given location without individual consideration	Staff Hearing Officer
Conditional Use Permit	Allows special uses that are of such a nature that it is impractical to establish, prior to development, the minimum standards usually applied to those classes or types of uses without an individual determination	Planning Commission
Coastal Development Permit	Required for development within the Coastal Zone	Staff Hearing Officer where authority is granted; Planning Commission
Variance	Modification of site development standards that cause unnecessary hardship due to site-specific circumstances	Planning Commission
Modifications	Modification of site development standards	Staff Hearing Officer; Planning Commission if involving floor area ratio modification or requires other Planning Commission discretionary action
Minor Exceptions for Fences, Screens, Walls and Hedges	Minor exceptions to certain standards as specified in the Fences, Screens, Walls and Hedges Guidelines	Community Development Director or designee; Public Works Director for corner lot and driveway sightline standards
Conversion Permit	Conversion of existing dwelling units to a hotel, condominiums, or similar use and for conversion of an existing mobilehome or permanent recreational vehicle park to a condominium, stock cooperative, residential development, commercial use office use, manufacturing use, or vacant land	Staff Hearing Officer where authority is granted; Planning Commission

**Table 2: Land Use Permit Issuing Authorities**

<i>Permit Type</i>	<i>General Purpose</i>	<i>Issuing Authority</i>
Development Plans	Ensure compliance with the Nonresidential Growth Management Program and as required in certain zones	Staff Hearing Officer for additions of 1,000 to 3,000 sf where no EIR and other discretionary action is required by the Staff Hearing Officer; Planning Commission for additions greater than 3,000 sf and other instances
Transfer of Existing Development Rights	Allow transfer of existing nonresidential development rights from certain properties to certain other properties within the City	Planning Commission for transfers of more than 1,000 sf
Medical Marijuana Storefront Collective Dispensary Permit	Operation of a Medical Cannabis Dispensary	Staff Hearing Officer

#### Sampling of Stakeholder Comments:

- As part of NZO, clarify and increase the types of projects that can be ministerial instead of discretionary.
- Reduce the process, time, and cost. Over the years, the process has become more complicated and involves more discretionary review. It has increased the cost of development due to process.
- Customers want simplicity and predictability. Need to reduce the number of projects that are discretionary and have to go through CEQA.
- Key to simplification is more discretion on staff's side. Minor projects should be simple.
- Need to include flexibility at the counter and have trained staff to make decisions administratively instead of having to always go on the Consent Calendar.
- If you are going to make things more flexible, modifications have to be really justified.

## RECOMMENDATIONS

There are a wide variety of options that Santa Barbara could consider for revising its current regulations to streamline the decision-making process.

### 2-A Provide Additional Administrative Relief Options

The existing ordinance provides for little flexibility in the application of development standards. This is particularly evident in the number of Modification requests to address altera-

tions to nonconforming structures. Many of these Modifications, typically related to setbacks, are consistently approved with standard conditions and little or no controversy.

The City currently allows certain minor exceptions for fences, screens, walls, and hedges to be approved at the administrative level. This type of administrative approval could also be allowed for other minor projects to gain relief from codified locational, developmental, and operational standards. This could be done in the form of additional provisions for approval of exceptions, including Staff-level or Design Review Board approval of minor dimensional standards, although aesthetic controls would still apply.

Through efforts to clarify and streamline the ZIR process, certain types of improvements have been proposed to qualify for Administrative Zoning Approval, including certain encroachments into setbacks, private outdoor living space, open yards, or building separation areas. The Administrative Zoning Approval process would expedite the resolution of discrepancies found during the preparation of a ZIR by giving Staff the authority to grant zoning clearance for minor improvements that do not conform to the zoning requirement in certain instances.

## **2-B Clarify Review and Approval Procedures**

The approval process can be streamlined simply by consolidating and clarifying procedures and permit approval criteria. Decision-making protocols should be clearly defined so that it is clear how approvals are processed, and the intent of these regulations should be included to help determine if a proposal meets the purpose of the regulation.

All pertinent public hearing information (e.g., what information should be included in the notices, how notices are to be given [e.g., mailing, posting, publishing, use of the Internet], to whom notices should be sent, how hearings are to be conducted) should be located in one succinct chapter so that Ordinance users will only need to look in one place to locate the applicable information.

## **2-C Increase Director and/or Staff Hearing Officer Authority for Approval**

The City should grant authority to the Staff Hearing Officer to approve some Conditional Use Permits for uses that are “limited in scope and impacts” but which currently require a hearing by the Planning Commission, such as residential condominium conversions of more than four units. The Staff Hearing Officer would be required to make the same findings as the Planning Commission, and decisions would be subject to appeal. Additionally, the number of Modification requests could be reduced by updating some of the existing standards (e.g., setbacks, front yard, open yard requirements) to more accurately reflect the City’s established and desired development patterns.

## **2-D Streamline Zoning Review**

Many jurisdictions have been able to streamline zoning review by amending their ordinances to include carefully crafted standards and restrictions that are specific to particular uses. Standards can also be specific to zoning districts or clearly defined physical locations (e.g.,

arterial streets, locations within 100 feet of a residential zoning district, sites with slopes exceeding 30 percent).

There are a variety of approaches the City could use to reduce the number of items requiring Conditional Use Permits, Performance Standards Permits, or Modifications by allowing more actions by right subject to:

- Compliance with physical development and design standards that could be added to the ordinance based on the General Plan's goals for design quality;
- Compliance with new standards and requirements that reflect "standard conditions" that are typically imposed when such actions have been conditionally approved by the Planning Commission; and
- Compliance with specific limitations on location, floor area, hours of operation, and similar features that are the source of potential adverse impact.

The incorporation of "limited actions" makes it possible to eliminate or streamline discretionary review for those items that meet specific standards and limitations and do not exceed specified threshold criteria.



## Recommendation No. 3: Support Adaptive Reuse and Protect the Character of Distinct Areas

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Both City staff and stakeholders identified a need for the NZO to include updated uses and development standards that reflect the City's present and future development goals, promote the character of distinct areas, and enhance opportunities for adaptive reuse. Some stakeholders and City staff noted that additional use restrictions should be updated to preserve the limited number of remaining industrial areas in the City.

Development standards can provide a barrier to adaptive reuse when alterations or changes in use may trigger the need to bring a property up to current requirements. Parking requirements also have a large influence on the ability to utilize property. Because of the high costs of building and maintaining off-street structured parking, minimum parking requirements can raise barriers to reuse of underutilized parcels. This is particularly true in historic and other already built-out areas, where there may not be enough space to provide required parking.

### DISTINCT AREAS

The City consists of distinct areas, both nonresidential such as Downtown, the Funk Zone, and industrial areas, and residential, such as the Riviera, Mesa, and San Roque neighborhoods. These and other areas are identifiable by their distinguishing development features. For example, the Mesa Neighborhood is an older neighborhood that characteristically has small setbacks and single-car garages, the Riviera Neighborhood is located in the hillsides and is represented by development with very small front setbacks, while the San Roque neighborhood typically exhibits greater setbacks.



*Santa Barbara's distinct districts have unique development features depending on the area in which they are located.*

### The 1975 Downzone's Creation of Nonconforming Residential Properties

Although there have been many rezones over the years, one significant and far-reaching ordinance amendment was the 1975 residential downzone, which reduced residential density

levels at the time as a means to living within resources. Some of the specific zone changes of the “residential downzone” directly relate to decreasing density, such as increased minimum lot sizes in single-family areas and reduced number of units allowed per acre. Others, such as increased setback requirements relate to site design, and do not directly affect density. Consequently, many residential neighborhoods are now considered nonconforming as the lots or structures do not meet the current standards, and when a property owner seeks to make changes or additions to the structure, they often result in a Modification request to the City due to the structure’s nonconforming status. Appendix A provides a tabular comparison of the pre-1975 required lot area and front and interior setbacks by neighborhood for those areas involved in the residential downzoning.

The City noted that the most common Modification request involves a property owner’s desire to alter or add to a legal nonconforming structure that encroaches in a required setback without complying with the current setback. These frequently requested Modifications create additional discretionary review by the Staff Hearing Officer or Planning Commission that could potentially be approved at a lower level, or the standards could be amended so that these frequent nonconforming situations are made to conform to the NZO provisions.

The intent behind the 1975 downzoning would still be met by retaining the density limitations, while revising some of the current standards back to previous levels to more accurately reflect the established development patterns for various neighborhoods.

### **Encroachment on Industrial and Manufacturing Areas by Commercial and Residential Uses**

The General Plan identifies the need for industrial and manufacturing uses in the City, noting that many of the businesses are local, and in some cases are one-of-a-kind and provide vital services to the community. Issues have arisen as certain uses within the C-M and M-1 zones have increased over other types of uses (i.e., commercial uses have increased over industrial and manufacturing uses in the M-1 zone, and multi-family residential uses are expanding in the C-M zone). Within the General Plan, the City sets out to preserve and encourage the long-term integrity of light manufacturing uses by narrowing commercial use and limiting residential development in these areas. At the same time, the General Plan identified the C-M zone as areas for the highest residential density. There is a need to balance protection of existing light manufacturing uses with encouraging high-density priority housing.

The General Plan allows only priority rental, employer sponsored, or co-operative housing at the high density to minimize the displacement of light industrial and manufacturing sites with market rate ownership housing in this area. Likewise, the General Plan supports having an industrial area dedicated to industrial uses by narrowing the range of commercial uses in the M-1 area to mitigate the potential increase in land costs and associated displacement of heavier industrial uses.

## **RESIDENTIAL PARKING REQUIREMENTS**

The residential parking requirements in the Zoning Ordinance have changed many times over the years, leading to a wide range of nonconforming buildings. Residential parking requirements are determined by use and not by zone. In other words, a single family residence in any zone in the City has the same parking requirements. Prior to 1950, there was no residential parking requirement for residential properties. In 1950, 1 uncovered parking space per unit was required. In 1962, the requirement was changed to 2 uncovered parking spaces per single-family home and different requirements were created for duplex and multiple family development. In 1972, the requirement was changed to 2 covered parking spaces per single-family home. In 2008, exceptions to the covered parking requirement were created to allow either one or two uncovered parking spaces for single-family residences under certain circumstances related to the maximum Floor to Lot Area Ratio (FAR). Parking in driveways in front of garages is not allowed to be counted toward the parking space requirement unless the area is located outside of the front setback, screened, and not blocking covered parking.

Many stakeholders expressed concern with the existing parking requirements such as the nonconforming parking triggers. Prior to 1980, any amount of addition or change of use to a nonconforming building triggered full compliance with current parking requirements. In 1980, the ordinance was amended to allow properties with nonconforming parking to add cumulative additions up to 50 percent of the square footage of the building that legally existed as of 1980 without bringing the parking to current standards. However, if additions exceed 50 percent, then the parking must be brought up to all current standards with respect to both the number and configuration of spaces.

Because of the older age of much of the City's housing stock, these requirements can be difficult to meet for residences that were constructed prior to adoption of these requirements and where there is not enough space on the lot to comply with the regulations. Due to geographic and other limitations, residences in hillside areas may also be subject to particular difficulty with the parking requirements. Recurring ideas that have been expressed are that the City should revise the parking requirements to allow for parking in driveways in front of a garage to satisfy as a parking space and to allow a single family addition of more than 50 percent without triggering the need to bring a nonconforming garage up to the current code.

## **NONRESIDENTIAL PARKING REQUIREMENTS**

The quantity, location, and appearance of parking areas have a substantial impact on the character and functionality of streets, commercial corridors, and major employment destinations. Stores, restaurants, offices, and employers use convenient, visible, and plentiful parking to attract customers and serve employees. On the negative side, too much parking, particularly too much surface parking, has a negative impact on community aesthetics, walkability, stormwater runoff, and urban form in general.

A number of stakeholders, as well as City staff, have expressed concern with the current parking standards in Santa Barbara. Nonresidential parking requirements have changed over time, which has resulted in numerous provisions that do not always result in the intended or

most effective implementation of the parking needs in a given area or for a particular use. For example, prior to 1957, there was no parking requirement for nonresidential buildings. In 1957, all commercial and industrial uses required one parking space per 500 square feet citywide. In 1980, the parking requirement for nonresidential uses was changed to be more consistent with parking demand. For example, parking requirements changed to 1 parking space per 250 square feet for commercial and office uses, 1 parking space per 500 square feet for industrial manufacturing uses, and 1 parking space per 3 seats for restaurants (1/100 s.f. for fast food), etc.

Many of the parking changes that have occurred have been tied to General Plan goals at the time. For example, most recently the reduction of parking for multiple family units to 1 space was as an effort to incentivize smaller, more affordable housing. Parking demand in the City has been used historically as a land use tool and the NZO should carefully consider the land use ramifications to changing the parking requirements. Parking requirements can be used to successfully build commercial areas and protect, preserve and enhance the character of existing neighborhoods. We want to consider streamlining certain requirements while also avoiding unintended consequences.

## **NONCONFORMING USES AND STRUCTURES**

The current Zoning Ordinance includes separate provisions that deal with nonconforming uses and structures in Chapter 28.87, General Provisions. The provisions include requirements by which nonconforming buildings or structures may be maintained, improved, or altered.

Generally, nonconforming structures may be maintained, improved, or altered provided improvements do not change the use or the basic, exterior characteristic or appearance of the structure. Additions that conform to the current zoning standards are allowed, as well as minor improvements that change the exterior characteristics and minor expansions of floor area are allowed in certain circumstances.

Nonconforming uses are treated differently. On a site with nonconforming uses, there are only limited exceptions to prohibitions on the increase or enlargement of the floor area of a building or structures. This inflexibility makes upgrading and maintaining the property difficult and could place undesirable pressure on uses that do not fit the current regulations but are otherwise well established, benign, or even beneficial to the surrounding neighborhood.

The City may want to consider a tiered system that distinguishes between those nonconforming uses that are small and relatively benign and those that are detrimental to surrounding owners and residents. The ordinance could be changed to make it easier to upgrade those nonconforming properties that do not substantially conflict with General Plan policies and to eliminate those activities and structures that are clearly incompatible with and detrimental to surrounding uses, thereby promoting adaptive reuse of certain types of uses. A tiered system could include a procedure for licensing nonconforming uses that grants property owners the privilege of continuing, and even expanding, nonconforming activities subject to certain requirements.

#### **Sampling of Stakeholder Comments:**

- Look at adaptive reuse and change of use triggers.
- Look at averaging setbacks in single-family zones like in the County.
- We are losing industrial uses in the C-M Zone to multi-family residential. Need ordinances in place to help preserve these industrial uses.
- Nonconforming ordinance should be clear. Everyone needs to know what you can and cannot do.
- Need to consider other ways of providing the second [parking] space when required. Consider floor area or square footage guidelines, tandem parking, or parking in driveway, screened space in setback, but need to ease up on this requirement.
- Need to consider parking in driveways. Many people use their driveway for parking, so why not recognize and allow that?
- 50% parking threshold is an impediment to allowing people to make an addition to their property.

### **RECOMMENDATIONS**

There are a wide variety of options that Santa Barbara could consider for updating its current regulations to support adaptive reuse and promote the character of distinct areas.

#### **3-A Modify Setback Standards to Reflect Neighborhood Character**

Planning Staff has noted that the most frequent type of Modification request related to nonconforming situations is due to nonconformities related to front and interior setback requirements that came about as a result of the residential downzone. Where the prevailing and desired development pattern is consistent with the pre-1975 setback requirements, one consideration is to change the setback requirements to reflect the previous standard. This could also occur where the pre-1975 setback requirements and current setback requirements are similar such as in the East San Roque neighborhood where the pre-1975 setback was five feet and the current setback requirement is six feet—a difference of just one foot. Reverting these setback standards to pre-1975 requirements would not create a significant change to the development pattern in those neighborhoods. In fact, it would serve to preserve the historic character of the area as the majority of lots contain existing structures. Residential density limitations would not change.

The City can also explore other ideas such as allowing additions to existing buildings to follow along the same setback line as the nonconforming structure. In areas where the pre-1975 setback standards are not appropriate, the City should evaluate the current setback standards to evaluate whether changes are appropriate to support and retain the established neighborhood character.





*Santa Barbara's residential neighborhoods have distinct development characteristics.*

### **3-B Narrow Residential and Commercial Uses In Industrial Areas**

When revising use regulations, the City should re-evaluate and expand its regulation of uses that create potential incompatibilities for development that is desired in certain areas, such as the limited space remaining for manufacturing and industrial uses due to the growing number of commercial uses in the M-1 zones. The City should provide standards that limit the types of commercial uses allowed in these areas.



*The City's industrial areas are an important part of the fabric of the community.*

### **3-C Update Residential Parking Requirements**

One of the purposes for the NZO is to reflect the way that people use the land in the City. It is common practice in Santa Barbara and other cities for residents to use their driveways as a parking area. The City should assess whether allowing parking in driveways to satisfy the requirements for single-family zones would otherwise subject the community or individual properties to problematic results, and if not, consider revising this requirement. The City should also evaluate the requirement to bring the nonconforming parking up to current standards once additions exceed 50 percent of the square footage as of 1980 for single family residences. As previously described, this requirement can limit what homeowners can do with their property and, in some cases, is contrary to the character of the neighborhood.

### **3-D Allow More Flexibility for Nonresidential Parking Requirements**

The current Zoning Ordinance includes confusing parking requirements that can create obstacles to economic investment and reinvestment of properties.

The non-conforming parking ordinance allows non-conforming buildings to change the use and provide only those additional parking spaces required for the new use. In some situations where additional parking spaces cannot be provided due to site constraints, this may result in the negative effect of deterring businesses from expanding or investing within the City and can end up promoting the continuation of a non-conforming use. The City could evaluate allowing non-conforming buildings to change use without providing additional parking spaces in order to promote the adaptive reuse of existing buildings. In addition, parking requirements get further complicated when different types of uses are proposed within a building. Employing “use” groups discussed in Recommendation 1-D could also help simplify application of parking standards.

Another difficulty is the parking formula used for the varying types of food establishments. The parking formulas are different depending on fast food or sit down restaurant. As part of the NZO, evaluating how to standardize the parking for these uses would be beneficial.



Some flexibility should be incorporated into the parking requirements to support overall access and the satisfaction of broader community objectives. However, the provisions for flexibility should be reviewed and combined where possible to provide more certainty in the achievable number. The current system of numerous opportunities for parking reductions (e.g., zones of benefit, industrial or office uses greater than 10,000 s.f.) should be grouped together and easier to understand for applicants.

Flexibility could also be offered in the way that parking is designed and located.



*The proper amount of well-designed parking can attract customers and serve employees, while too much parking, particularly too much surface parking, can have a negative impact on community aesthetics and urban form in general.*



### **3-E Establish a Classification System for Nonconforming Uses**

The City could adopt a new approach to regulating nonconforming uses that would allow it to distinguish among categories of nonconforming uses that should be regulated differently. Benign uses (e.g., those that have no impacts on neighbors) would be treated differently from potentially harmful or detrimental nonconforming uses. Such a system could apply different rules to:

- Benign nonconforming uses that could be treated as conforming, expand, and remain indefinitely, as determined by the Planning Commission and subject to conditions or limitations, with provisions for revoking its “benign” status if new nuisances arise;
- Uses that should be replaced at some time in the future in order to implement the General Plan’s long term objectives where redevelopment and/or reuse is unlikely in the near term because of economic or market considerations; and
- Uses that are inconsistent with the General Plan and zoning regulations, will impede implementation of the Plan, and are detrimental because of health, safety, or substantial aesthetic impacts.

In this classification system, benign uses are those that do not have the potential to adversely impact surrounding properties. A small grocery store or office could be classified, for example, as benign, while an engine rebuilding business, auto body shop, or adult bookstore could not. The NZO would include the formulation of test parameters to classify a nonconforming use as benign, which may include the following criteria:

- Does not generate noise or odors incompatible with surrounding uses;
- Does not create significant traffic; and
- Does not involve activities or processes that are potentially harmful or dangerous.

The process of determining a benign nonconforming use would allow for public comment; it also would provide authority to impose conditions to ensure that uses deemed benign do not change their operations in a way that may adversely affect neighbors (e.g., a condition limiting hours of operation or prohibiting alcohol sales).



*Some nonconforming uses, such as corner stores in residential neighborhoods, can be benign or even beneficial; other nonconforming uses warrant special attention to ensure they do not adversely affect neighborhoods.*

## Other Issues

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In addition to the broad categories covered in previous sections, the NZO can address a number of narrower concerns raised by the needs of particular areas, uses, and segments of the population. This section looks at how the NZO can integrate policies that comply with requirements for uses protected by State and federal law, such as places of worship, housing for disabled persons, and affordable housing. Although these issues did not fall within the scope of the previous sections, the concerns raised here are important for ensuring that the NZO meets all goals of the General Plan and are equitable, legally sound, and consistent with applicable regional policies.

### PROTECTED USES

California law grants cities and counties relatively broad discretion in the regulation of land uses and development, and the federal courts and United States Congress have, for the most part, left land use and environmental regulation up to state and local government. There are, however, some important exceptions to this approach. If local regulations conflict with federal law, pursuant to the supremacy clause of the United State Constitution, then local laws are pre-empted. In some cases, both Congress and the State have identified matters of critical concern that limit the authority of California cities.

This section discusses some of these protected uses, applicable rules, and potential issues that should be considered as part of the NZO.

- Religious uses (Federal Religious Land Use and Institutionalized Persons Act of 2000, California Gov. Code Sec. 25373 and 37361)
- Housing for persons with disabilities (Federal Fair Housing Act Amendments of 1998, Americans with Disabilities Act as incorporated into California Gov. Code Section 11935 and Civil Code Section 54.1)
- Affordable housing (Gov. Code Sections 65589.5 and 65915)
- Cottage Food (AB 1616)

### Religious Uses

The Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) requires public agencies to demonstrate a compelling government interest and to use the least restrictive means to implement a land use regulation that imposes a substantial burden on religious exercise of a person or religious assembly or institution. The federal courts have ruled that requiring a religious institution, such as a church, temple, or religious school to apply for a conditional use permit, submit information needed to conduct zoning review, or obtain a rezone or other approval required for all other similarly situated applicants is, in most cases, not be considered to be a “substantial burden” on religious exercise. Local agen-

cies that impose limitations on where religious uses may locate or impose requirements that the applicant considers “burdensome” may, however, be sued in federal court.

Santa Barbara’s current Zoning Ordinance allows churches in all residential zones, commercial zones, and the R-O Zone with a Conditional Use Permit, and in the C-2, C-M, and M-1 zones by right. The Ordinance sets no specific design guidelines, landscaping and screening requirements, or additional setback requirements (with the exception of the requiring adult entertainment businesses to be located at least 500 feet away from a religious institution in the C-2, C-M, or M-1 zones). In addition, the provisions for the R-2, R-3, and R-4 zones note that principal land uses are for residential dwellings or hotel-motel uses, together with recreational, religious and educational facilities.

While “churches” are identified as allowed uses, they are not clearly defined in the Zoning Ordinance. The term “sensitive uses” includes religious institutions generally and religious institution is defined in Chapter 28.81, Adult Entertainment Facilities, as “any church, synagogue, mosque, temple, or building which is used primarily for religious worship, religious education incidental thereto and related religious activities.” There is no explicit definition for churches and what they consist of. For example, church uses could presumably include a number of church-operated social and community services, such as daycare centers, charity dining, and other activities. It is important that the City makes clear how these uses are defined and governed in the NZO because they are protected by federal law.

One option is to classify churches as a “community assembly” use which would include other uses such as community centers, meeting halls, and other facilities for public or private meetings that are similar in function. This would ensure that churches and other religious institutions are treated the same as similarly situated uses.

## **Fair Housing**

Various provisions in both federal and State law limit the authority of local agencies to regulate facilities for persons with special needs. In 1988, Congress extended the 1968 Fair Housing Act’s prohibitions against housing discrimination to include discrimination on the basis of handicap or familial status (families with children). The Federal Fair Housing Act Amendments (FHAA) defined “handicapped” to include persons with physical or mental disabilities and recovering alcoholics and drug addicts. The FHAA not only prevents communities from discriminating against special needs individuals but also requires “reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped persons an] equal opportunity to use and enjoy a dwelling.” The California Fair Employment and Housing Act, codified as Government Code Sections 12900 to 12996, reinforces provisions of federal statute to prohibit any unlawful discrimination against persons with disabilities.

These statutes and regulations have the following important effects on zoning:

- The use of property for the care of up to six mentally disabled persons including support staff necessary to assist residents must be regulated as a single-family residential use;
- Family care homes, group homes, and foster homes for up to six persons cannot be subject to regulations that are more restrictive than those imposed on similar dwellings in the same zone;
- Inpatient and outpatient facilities licensed to treat persons with mental disabilities or substance abuse problems must be regulated in the same manner as properties used for treatment of general medical patients.

Responding to federal and State laws that require local agencies to allow physical modifications necessary to make properties fully accessible to persons with physical handicaps, the State Attorney General advised cities and counties to revise their ordinances to make it possible to grant accommodations where needed. The State Supreme Court has prohibited local agencies from limiting the number of persons unrelated by blood, marriage, or adoption who can reside in a single-family home. This restriction affects local ability to regulate groups of individuals who live as a single household.

Santa Barbara's existing Zoning Ordinance allows group home residences of persons with disabilities or handicaps in all residential zones without obtaining a variance or Conditional Use Permit unless such approval would be required for a residential unit under the same circumstances. The current Zoning Ordinance specifically allows group homes in the single-family residences zones and utilizes its pyramid zoning structure to allow group homes in the other residential zones by allowing any use permitted in the more restrictive single-family zones.

The federal and State requirements for accommodating individuals with disabilities also dictate that cities establish procedures to allow modification of setback requirements and other standards that may preclude alterations to make buildings accessible. The current Zoning Ordinance allows for a Modification of zoning regulations where necessary to allow improvements to an existing building to provide reasonable accommodations to individuals with disabilities.

## **Affordable Housing**

Over the past several decades the California legislature has adopted a number of laws that limit the ability of cities and counties to reject or reduce the feasibility of housing developments that will help to meet the housing needs identified in their general plan housing elements. These provisions include the State Density Bonus Law (Gov. Code 65915), which allows for density bonuses and additional incentives for affordable housing. Other laws include provisions that bar discretionary review of certain attached or multifamily housing pro-

jects (Gov. Code 65589.4), require local agencies to make specific written findings in order to deny an affordable housing development (Gov. Code 65589.5(d)), and limit the ability of local agencies to prohibit the repair or rebuilding of multifamily dwellings involuntarily destroyed or damaged (Gov. Code 65852.25). Regardless of whether a local agency incorporates or makes specific reference to these provisions in its zoning ordinance, it is responsible for complying with these requirements. Sections 28.87.400 and 28.87.500 in the General Provisions chapter of the Zoning Ordinance references and lays out provisions for compliance with these laws. It may be advisable to also explicitly state that compliance with these laws is the intent of the provisions in these sections to increase the public's awareness of the City's legal obligations and to remind decision makers of these rules. The City may soon be undertaking revisions to the City's Density Bonus ordinance.

### **Cottage Food**

The term "Cottage Foods" refers to food produced in the home. California's AB 1616 (Gatto), passed in September 2012, sets standards for homemade food operations and requires local jurisdictions to permit them as a permitted use of residential property or with a discretionary permit. Cities may establish reasonable requirements concerning spacing and concentration, traffic, parking, and noise. The law establishes a list of non-potentially hazardous food products that are permitted, and authorizes the Department of Public Health to maintain this list. Two classifications of Cottage Food Operation are defined: "Class A" CFOs are only allowed to engage in direct sales, including sales at certified farmers' markets, farm stands, etc., while "Class B" operations can sell both directly and indirectly to retailers. Both types of operation must apply for registration from the State, a process meant to ensure that health and safety are protected. Class B operations are subject to initial and annual inspections, while Class A operations may only be inspected on the basis of a consumer complaint.

In the NZO, cottage foods could be addressed in a new section governing home occupations. The new section would include provisions carrying out Assembly Bill 1616, and providing local standards for concentration, parking, noise, and hours of operation, among others.

## Appendix A: Effects of 1975 Rezoning – Setback Standards

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Table A-1 compares the zone changes made and resulting impacts to setback standards as a result of residential rezoning that occurred in 1975.

Neighborhood	Current Zoning	Pre-1975 Zoning	Current Front Setback	Pre-1975 Front Setback <sup>1</sup>	Current Interior Setback	Pre-1975 Interior Setback
East & West Mesa	E-3	R-1	20'	15/20'	6'	5'
Required Lot Area	7,500 s.f.	6,000 s.f.				
Alta Mesa (Area 1)	E-1	E-2	30'	25'	10'	8'
Required Lot Area	15,000 s.f.	10,000 s.f.				
Alta Mesa (Area 2)	E-1	E-3	30'	20'	10'	6'
Required Lot Area	15,000 s.f.	7,500 s.f.				
Alta Mesa (Area 3)	E-1	R-2 <sup>2</sup>	30'	15/20'	10'	6' <sup>3</sup>
Required Lot Area	15,000 s.f.	7,000 s.f.				
Bel Air (Area 1)	E-1	E-3	30'	20'	10'	6'
Required Lot Area	15,000 s.f.	7,500 s.f.				
Bel Air (Area 2)	E-3	R-1	20'	15/20'	6'	5'
Required Lot Area	7,500 s.f.	6,000 s.f.				
Oak Park	E-3	R-1	20'	15/20'	6'	5'
Required Lot Area	7,500 s.f.	6,000 s.f.				
Samarkand (Area 1)	E-3	R-2	20'	15/20'	6'	6'
Required Lot Area	7,500 s.f.	7,000 s.f.				
Samarkand (Area 2)	E-3	R-3 <sup>4</sup>	20'	10/15'	6'	6/10' <sup>5</sup>
Required Lot Area	7,500 s.f.	14,000 s.f.				
East San Roque	E-3	R-1	20'	15/20'	6'	5'
Required Lot Area	7,500 s.f.	6,000 s.f.				

<sup>1</sup> On lots that are zoned E-1, E-2, E-3, R-1, and R-2, the required front yard setback can be reduced by 5 feet if the front half of the lot has a slope greater than 20%. This allowance was in effect prior to 1975.

<sup>2</sup> In 1975, the lot size for R-2 zoned lots was increased from 3,000 s.f. per unit to 7,000 s.f. for newly created lots and 3,500 s.f. per unit.

<sup>3</sup> Prior to 1973, the interior setback was 5 feet for R-2 zoned lots. In 1973, it was changed to 6'.

<sup>4</sup> In 1975, lot size for R-3/R-4 was increased from 1,000 s.f. per unit to 14,000 s.f. for newly created lots. The number of units allowed is dependent on total lot size SBMC §28.21.080. Variable density allowing additional densities based on bedrooms was adopted in May 1978.

<sup>5</sup> Prior to 1973, the interior setback was 5'/6' for R-3/R-4 zoned lots. In 1973, it was changed to 6'/10'. The setback is based on stories in the building.

Neighborhood	Current Zoning	Pre-1975 Zoning	Current Front Setback	Pre-1975 Front Setback	Current Interior Setback	Pre-1975 Interior Setback
Upper East (Area 1)	E-1	E-2	30'	25'	10'	8'
Required Lot Area	15,000 s.f.	10,000 s.f.				
Upper East (Area 2)	E-1	E-3	30'	20'	10'	6'
Required Lot Area	15,000 s.f.	7,500 s.f.				
Lower Riviera (Area 1)	E-1	E-2	30'	25'	10'	8'
Required Lot Area	15,000 s.f.	10,000 s.f.				
Upper State	E-3	R-1	20'	15/20'	6'	5'
Required Lot Area	7,500 s.f.	6,000 s.f.				
Lower Riviera (Area 2)	E-1	E-3	30'	20'	10'	6'
Required Lot Area	15,000 s.f.	7,500 s.f.				
Lower Riviera	E-1	R-1	30'	15/20'	10'	5'
Required Lot Area	15,000 s.f.	6,000 s.f.				
Eucalyptus Hill	E-3	E-2	20'	25'	6'	8'
Required Lot Area	7,500 s.f.	10,000 s.f.				
Eastside	R-2	R-3	15/20'	10/15'	6'	6/10'
Required Lot Area	7,000 s.f.	14,000 s.f.				
Cielito	A-1	A-2	35'	30'	15'	10'
Required Lot Area	43,560 s.f.	25,000 s.f.				



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